

regardless of the principal mission of the compiling DoD Component.

§ 310.29 Specific exemptions.

(a) *Use of specific exemptions.* The specific exemption established by 5 U.S.C. 552a(k) of the Privacy Act may be claimed to protect records that meet the following criteria (parenthetical references are to the appropriate subsection of the Act:

(1) *(k)(1).* Information subject to 5 U.S.C. 552(b)(1), (DoD 5200.1-R) (see also paragraph (c) of this section).

(2) *(k)(2).* Investigatory information compiled for law-enforcement purposes, other than information that is covered by the general exemption (see § 310.28). If an individual is denied any right, privilege or benefit he or she is otherwise entitled by Federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual shall be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(i) The information must be compiled for some investigative law enforcement purpose, such as a criminal investigation by a DoD office, whose principal function is not law enforcement, or a civil investigation.

(ii) The exemption does not apply to investigations conducted solely for the purpose of a routine background investigation (see paragraph (a)(5) of this section), but will apply if the investigation is for the purpose of investigating DoD personnel who are suspected of violating statutory or regulatory authority.

(iii) The exemption can continue to be claimed even after the investigation has concluded and there is no future likelihood of further enforcement proceedings.

(3) *(k)(3).* Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3056, "Powers, Authorities, and Duties of United States Secret Service."

(4) *(k)(4).* Records maintained solely for statistical research or program evaluation purposes and that are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records that may be disclosed under 13 U.S.C. 6, "Information for other Federal Departments and Agencies.

(5) *(k)(5).* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source.

(i) This exemption permits protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(ii) This exemption is applicable not only to investigations conducted prior to the hiring of an employee, but it also applies to investigations conducted to determine continued employment suitability or eligibility.

(6) *(k)(6).* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(7) *(k)(7).* Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(b) *Promises of confidentiality.* (1) Only the identity of sources that have been given an express promise of confidentiality may be protected from disclosure under paragraphs (a)(1), (5), and (7) of this section. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, also may be protected from disclosure.

(2) Ensure promises of confidentiality are not automatically given but are used sparingly. Establish appropriate procedures and identify fully categories of individuals who may make

such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought (see 5 CFR part 736).

(c) *Access to records for which specific exemptions are claimed.* Deny the individual access only to those portions of the records for which the claimed exemption applies.

Subpart G—Publication Requirements

§ 310.30 Federal Register publication.

(a) *What must be published in the FEDERAL REGISTER.* (1) Four types of documents relating to the Privacy Program must be published in the FEDERAL REGISTER:

- (i) DoD Component Privacy Procedural rules;
- (ii) DoD Component exemption rules; and
- (iii) System notices.
- (iv) Match notices (See subpart L to this part).

(2) See DoD 5025.1–M,⁹ “Directive Systems Procedures” and Administrative Instruction (AI) No. 102,¹⁰ “Office of the Secretary of Defense Federal Register System” for information pertaining to the preparation of documents for publication in the FEDERAL REGISTER.

(b) *The effect of publication in the FEDERAL REGISTER.* Publication of a document in the FEDERAL REGISTER constitutes official public notice of the existence and content of the document.

(c) *DoD Component rules.* (1) Component Privacy Program procedures and Component exemption rules are subject to the rulemaking procedures prescribed in AI 102.

(2) System notices are not subject to formal rulemaking and are published in the FEDERAL REGISTER as “Notices,” not rules.

(3) Privacy procedural and exemption rules are incorporated automatically into the CFR. System notices are not published in the CFR.

(d) *Submission of rules for publication.* (1) Submit to the DPO, ODA&M, all proposed rules implementing this part in proper format (see DoD 5025.1–M and

AI 102) for publication in the FEDERAL REGISTER.

(2) This part has been published as a final rule in the FEDERAL REGISTER. Therefore, incorporate it into your Component rules rather than by republication (see AI 102).

(3) DoD Component procedural rules that simply implement this Regulation need only be published as final rules in the FEDERAL REGISTER (see DoD 5025.1–M and AI 102). If the Component procedural rule supplements this part in any manner, they must be published as a proposed rule before being published as a final rule.

(4) Amendments to Component rules are submitted like the basic rules.

(5) The DPO submits the rules and amendments thereto to the FEDERAL REGISTER for publication.

(e) *Submission of exemption rules for publication.* (1) No system of records within the Department of Defense shall be considered exempt from any provision of this part until the exemption and the exemption rule for the system has been published as a final rule in the FEDERAL REGISTER.

(2) Submit exemption rules in proper format to the DPO. All exemption rules are coordinated with the DoD Office of General Counsel. After coordination, the DPO shall submit the rules to the FEDERAL REGISTER for publication.

(3) Exemption rules require publication both as proposed rules and final rules (see AI 102).

(4) § 310.31(b) discusses the content of an exemption rule.

(5) Submit amendments to exemption rules in the same manner used for establishing these rules.

(f) *Submission of system notices for publication.* (1) System notices are not subject to formal rulemaking procedures. However, the Privacy Act (5 U.S.C. 552a) requires a system notice be published in the FEDERAL REGISTER of the existence and character of a new or altered system of records. Until publication of the notice, DoD Components shall not begin to operate the system of records (i.e., collect and use the information). The notice procedures require:

- (i) The system notice describes what kinds of records are in the system, on whom they are maintained, what uses

⁹ See footnote 1 to § 310.1.

¹⁰ See footnote 1 to § 310.1.